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Department of Environmental Protection (“DEP”)
On
“Brownfields and Pennsylvania Incentives for Redevelopment”
Before the
U.S. House Committee on Government Reform,
Subcommittee on Federalism and the Census
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Lehigh University, Bethlehem, PA**

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today in Bethlehem. I appreciate the opportunity to share some ideas that can enhance all of our efforts to promote redevelopment projects that create jobs, revitalize communities and grow our tax bases.

As the Deputy Secretary that oversees the Land Recycling Program, I would like to thank Mr. Seif who served as Secretary of Environmental protection when the program was enacted into law -- and Congressman Dent who served in the Legislature and was instrumental in passage. We are also appreciative of Congressman Kanjorski's -- especially in the area of greyfield development.

I also wish to offer my thanks to Chairman Turner for taking on the issue of brownfields. Through your hearings, and proposed legislation that would allow an income tax credit for brownfield remediation costs, you bring needed attention to this critical community revitalization issue.

I would like to start by highlighting some of the elements that have made Pennsylvania's Land Recycling Program a national model for transforming abandoned, idle properties into new economic opportunities. I then would like to address several key recommendations for this panel to consider as we move forward to ensure the continued success of brownfield remediation across the country.

Prior to 1995, the consensus among Pennsylvania businesses was to abandon so-called “brownfields”. Pennsylvania's Land Recycling Program helped to reverse this trend. The trend reversal has led to tens of thousands of jobs created or retained, and the state is closing in on its 2,000th approved cleanup, including 700 in the last three years alone. The success of the program rests on several key components -- scientifically sound and reasonable cleanup standards, liability relief from future cleanup requirements under state law, standardized reviews and time limits, development authority, lender and fiduciary liability protection, and financial assistance.

Pennsylvania has a significant track record of making environmental protection work for businesses and employees. Governor Ed Rendell has expanded these efforts, working aggressively to provide new incentives and put in place enhanced approaches that speed up brownfield redevelopment.

The Governor's Business in Our Sites Fund provides \$300 million for local redevelopment efforts to make brownfield sites “pad ready.” The money helps to pay for acquisition, remediation and preparation, enabling these local entities to market ready sites to businesses that seek to build or expand immediately. This Fund was part of an ambitious \$2 billion economic stimulus package that offers a clear set of strategic investments to rebuild the economy and revitalize Pennsylvania.

Another piece of that package was PennWorks, a \$250 million voter-approved bond initiative that finances improvements to Pennsylvania's water and wastewater systems. Aging infrastructure can be a barrier to development, making it more difficult to lure businesses. PennWorks funds upgrades to make older sites more attractive while also ensuring a clean, safe water supply in Pennsylvania.

Under Governor Rendell's leadership, the Pennsylvania Infrastructure Investment Authority ("PENNVEST") has created a brownfield redevelopment funding mechanism as well. PENNVEST now issues low-interest loans for the remediation of sites that have been contaminated by past industrial or commercial activity and pose a threat to local groundwater or surface water sources.

DEP and the Department of Transportation unveiled a Smart Growth Permit in October 2003 to speed up infrastructure improvements in aging communities, reducing the number of individual stream work permits by 22 percent and cutting the processing time from several months to a few weeks for most projects. And, DEP's new Clean Fill Policy creates a general permit for the placement of materials in residential and industrial settings, revising standards that environmental groups and contractors said were inordinately complex and didn't do the job. Both of these revisions speed up the permitting process to make brownfield development more attractive.

Governor Rendell also put in place policies that make government more efficient and saves the regulated community time and money --- all while moving to clean up contaminated sites and eliminate any threat to public health and safety. The Brownfield Action Team, launched in 2004, created a single-point-of-contact system to streamline permits and redevelopment efforts for those sites that local officials target as redevelopment priorities. BAT relies on communities to tell the Department of Environmental Protection which brownfield projects are priorities for revitalizing an area, and requires communities to show cleanup and financing plans as well as the proposed use of the site and its benefits to the area. Local and state governments and private development efforts will work to get the job done as quickly as possible and BAT cuts permitting time in half.

Two major projects have been approved right here in this region alone. DEP approved its first BAT project last summer to redevelop 1,600 acres of the former Bethlehem Steel Corp. site in Northampton County with a mix of commercial, office, manufacturing and warehousing spaces that eventually will employ 6,000 workers with an annual payroll of \$210 million.

Just last week, DEP approved the West Sand Island project in Bethlehem, Lehigh County. This BAT project will expand the existing park, preserve green space, improve access to the riverfront and enhance the overall recreational value of Sand Island. The redevelopment plan, being run by the city, includes walking/biking trails, fishing piers, a nonmotorized boat dock, a pavilion with restroom facilities, a picnic area, a parking area and green space. This is all located on a former manufacturing site. There are four total BAT projects in this region and a fifth pending.

Other projects have been approved and are moving ahead as well in Adams, Beaver, Berks, Bradford, Cambria, Chester, Lackawanna, Luzerne, Monroe and Philadelphia counties.

For low-risk brownfield sites, the Governor streamlined the process, so that remediation plans receiving the stamp of approval from a licensed professional engineer are considered to meet all of the requirements of the Land Recycling Program's cleanup standards. This allows communities to reclaim smaller, low-risk sites that might not appeal to larger developers but still mean a great deal to small businesses seeking to reinvest in neighborhoods.

The Rendell Administration also added another enhancement through a historic Memorandum of Agreement (MOA) between DEP and the U.S. EPA to make Pennsylvania's Land Recycling Program the first and only in the nation to serve as a "one-stop shop" for state and federal standards

guiding the cleanup of brownfield sites. The MOA clarifies that sites remediated under the state's brownfields program also satisfy requirements for three key federal laws: the Resource Conservation and Recovery Act; the Comprehensive Environmental Response Compensation Liability Act, commonly referred to as Superfund; and the Toxic Substances Control Act. Removing the threat of federal legal action once a site meets Pennsylvania's stringent cleanup standards will encourage more businesspeople and economic development agencies to clean up and redevelop old industrial sites. The Commonwealth thanks and commends EPA for its leadership and partnership on this new way of doing business that has been so helpful to us.

Pennsylvania is also moving ahead to allow mine-scarred lands, commonly referred to as "greyfields," to be eligible for benefits similar to those enjoyed by brownfield projects. This issue is critical in Pennsylvania because we have more abandoned mines than any other state in the nation, and it promises to transform many of our coal communities into thriving commercial districts again.

One of the reasons our brownfields program has been so successful is that it has evolved to meet the changing demands of the market. That market continues to change, so our programs must continue to evolve to keep pace and ensure brownfield redevelopment remains competitive. Despite the many successes in Pennsylvania's Land Recycling Program, there is room for improvement --- but most of that depends on the support and assistance of our federal partners. There are several steps the federal government can take to help states advance brownfield redevelopment programs.

First, we need more flexibility in the U.S. EPA's brownfield funding program. EPA provides what commonly is called Subtitle C money that helps states start up and maintain brownfield programs. These funds have been of critical importance to us and we are grateful for them. We feel, however, that the money can be more optimally deployed. In states without brownfields programs, federal grant money gets passed directly to local governmental agencies, not the states. Because Pennsylvania has an established brownfields program of its own, we receive the EPA funding directly. Our Commonwealth, under the Rendell administration, has received \$988,000, \$1.06 million and \$1.02 million from EPA over the last three fiscal years, respectively.

The rules governing the allocation of these federal dollars are unnecessarily restrictive to states that have successful brownfields programs. For example, no more than 50 percent of our federal grant can be spent on remediation. The remainder must be spent on things such as marketing and administrative support. For states starting up a brownfields program, these costs are important. But for states like Pennsylvania, the real need is remediation, and giving states with established programs more flexibility could make a huge difference in rebuilding communities.

The reality is that brownfield redevelopment is difficult --- both from a perception standpoint and a cost standpoint. Many developers are still hesitant to tackle a brownfield remediation project without strong assurances with regard to resolution of legal liabilities, controlling remediation costs and access to investment capital. Without liability protection, developers, local redevelopment authorities and businesses are hesitant to consider any form of ownership or even redevelopment partnership. Banks and other institutions are unlikely to finance these projects.

Pennsylvania's Land Recycling Program does provide liability protection for brownfield development. Moreover, through our MOA with EPA, as described above, we can give developers limited comfort with respect to associated federal liabilities. Necessary improvements to this good foundation would include a more comprehensive federal assurance of liability relief. In addition, the

Pennsylvania MOA with EPA really extends only to joint processing of applications. It does not mean that federal liability can be relieved by successful participation in the state brownfields program. To provide the assurances that are necessary to developers, these efforts need to progress to genuine liability relief as opposed only to joint processing of applications.

In addition to liability relief, developers also seek assurances with respect to remediation costs. Fixed prices provide an incentive to move forward with redevelopment. It helps developers prepare budgets and attain financing because it removes the worries that financial institutions have when lending toward contaminated properties. A federal tax credit would enable developers to purchase the insurance they need to guarantee fixed pricing in remediation. The insurance guarantees that remediation costs to the developer will not exceed a set amount. The tax credit puts the insurance costs within reach and provides assurances needed to move ahead with cleanup, removing a hurdle that developers face when confronted by the decision to take on revitalizing abandoned industrial sites. Pennsylvania currently is considering legislation (H.B. 687) introduced by state Rep. Dan Frankel that would create a program for the purchase of certain types of environmental liability insurance, and for grants to pay the costs of those premiums.

Many developers still lack the capital to undertake brownfield ventures. Investors are reluctant to commit money for projects when the return on their investment could be years away. Congresswoman Hart has introduced two pieces of legislation designed to support redevelopment of old industrial sites common to western Pennsylvania. One bill would give tax-exempt status on bonds used to help finance the cleanup of brownfields. That currently is not the case. Bonds provide developers and businesses with the access to capital they need to clean up the sites. The other bill would allow businesses or developers to build savings accounts free of taxation for the cleanup of such sites. The tax advantages would apply only if the money is spent on remediation. The savings accounts would be the business equivalent of Individual Retirement Accounts, or IRAs. Congress should examine both of these bills as a means to enhance support for brownfield remediation.

Finally, all federal departments should streamline permitting to favor redevelopment of brownfields. Providing incentives and ensuring liability are essential. But streamlining the process is critical to ensure that these sites remain competitive on the open market. The faster we move brownfield sites through the regulatory process, the quicker we reclaim these sites and clean up communities.

Besides the normal economic development, the Pennsylvania Brownfields Program is helping to clean up the waterways by removing rusting old factories and replacing them with vibrant new communities, opening up riverfront development where former mills stood and providing access to the water, helping to redevelop communities that are trying to rebound and help communities take advantage of their particular opportunity. Brownfields are also critical in our land development efforts because revitalization of these areas serves to enhance communities, foster economic development, and minimize land consumption. Furthermore, brownfield sites are not a Right or Left issue. They are located in urban, suburban and rural areas and across the economic spectrum.

I thank you for your attention. Mr. Chairman and members of the Subcommittee, I'd be happy to answer any questions you have at this time.

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